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No. 91-754

In The

Supreme Court of the United States

October Term, 1991

HOME BOX OFFICE, INC., et al.,

Petitioners,

vs.

Z CHANNEL LIMITED PARTNERSHIP,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF RESPONDENT Z CHANNEL LIMITED PARTNERSHIP IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Z Channel Limited Partnership's Complaint for declaratory judgment and "for such other relief as the Court may deem just and proper" arising from the defendants' violation of the antitrust laws, pursuant to 15 U.S.C. § 15, presents an actual, justiciable controversy, or whether that claim has become moot by reason of the unavailability of injunctive relief.

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BRIEF OF RESPONDENT Z CHANNEL LIMITED PARTNERSHIP FOR A WRIT OF CERTIORARI

Respondent Z Channel Limited Partnership[1] ("Z Channel") respectfully submits this brief in opposition to the petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

JURISDICTION

In addition to the statutes enumerated in the petition, Z Channel's Complaint alleged specifically that the

[1] Pursuant to Rule 29.1, Z Channel certifies that it does not have any parent companies, subsidiaries that are not wholly owned, or affiliates.

district court had jurisdiction over Count One, the subject matter of this petition, under 15 U.S.C. § 15.[2]

STATUTES INVOLVED

In addition to the statutes identified in the petition, Z Channel believes that four other statutory provisions are implicated in this case:

1. Section 2201(a) of the Declaratory Judgment Act, 28 U.S.C. § 2201, provides in pertinent part:

> In a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

2. Section 2202 of the Declaratory Judgment Act, 28 U.S.C. § 2202, provides in pertinent part:

> Further necessary or proper relief based on a declaratory judgment or decree may be granted . . . against any adverse party whose rights have been determined by such judgment.

3. Section 4 of the Clayton Act, 15 U.S.C. § 15, provides in pertinent part:

> [A]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States . . . and shall

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[2] *See* First Amended Complaint at 15a, ¶ 46, attached hereto as an Appendix (hereinafter "App.").

> recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

4. Rule 8(f) of the Federal Rules of Civil Procedure provides:

> All pleadings shall be so construed as to do substantial justice.

COUNTERSTATEMENT OF THE CASE

A. The Parties

Z Channel was a pay television service in Los Angeles which exhibited movies exclusively. While it specialized in "classic" movies, it also exhibited, in direct competition with the national movie channels, including petitioner Home Box Office, Inc. ("HBO"), newly-released motion pictures distributed by the major studios, including "distributor" petitioners MGM/UA Telecommunications, Inc. ("MGM/UA"), Twentieth Century Fox Film Corp. ("Twentieth Century Fox") and Warner Bros., Inc. ("Warner Bros.").[3] HBO was also during the relevant period a distributor-licensor of motion pictures which it acquired from others or which were produced by its parent Time-Life, Inc.[4] (App. at 8a, ¶ 22.) However, the

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[3] Originally Paramount Pictures Corp. was also named as a defendant below. It was, however, dismissed while the appeal was pending in the Ninth Circuit.

[4] During the pendency of the case, HBO's parent Time-Life, Inc., acquired petitioner Warner Bros.

operative allegations of the Complaint attack HBO's conduct not as a licensor of Z Channel, but as a competitor. (*Id.* at 8a, ¶ 23, 9a, ¶ 25 and 12a, ¶ 38.) Accordingly, it is alleged that HBO "is a national pay television service that is marketed nationwide" which "owns and operates two all-movie pay television services known as Cinemax and Festival"[5] which together "command approximately 62.5% of the nationwide subscriber market . . . and approximately 59.1% of the [pay television] subscriber market in Los Angeles." (*Id.* at 6a, ¶ 13.) The essence of the Complaint is HBO's exertion of this market power, vis-a-vis the distributor petitioners (MGM/UA, Twentieth Century Fox, Warner Bros. and originally Paramount), to compel their refusal to license newly-released motion pictures to Z Channel when Z Channel sought to broadcast commercials during sporting events only. (*Id.* at 12a-13a, ¶ 38.)

B. Statement of Background Facts

This controversy arose out of Z Channel's decision, on April 1, 1988, to incorporate sporting events as part of its existing pay television movie programming. (App. at 9a, ¶ 26.) To make its sports programming profitable, Z Channel contracted to insert commercials during breaks in play. (*Id.* at 9a-10a, ¶ 28.) No commercials would be broadcasted during the exhibition of the licensed motion pictures which are the subject of this litigation. (*Id.*)

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[5] During the pendency of the case, HBO discontinued Festival.

Under the express terms of the petitioners' movie licensing and sublicensing agreements, however, Z Channel was prohibited from broadcasting any advertisements, regardless of whether or not they were placed only during the sporting events. (*Id.* at 13a, ¶ 39.) Each license agreement between Z Channel and a distributor petitioner (as well as the Z Channel/HBO license) contained (actually or arguably) some restriction against advertising on Z Channel. (*Id.* at 12a-13a, ¶ 38.)

Z Channel alleged that while it was negotiating modifications to its own licensing agreements with the distributor petitioners under which Z Channel would have been permitted to advertise during sporting events only, HBO, relying on its competitor status as the dominant pay television channel, used that market power to coerce the distributor petitioners into refusing to license Z Channel if it accepted advertising. HBO threatened to enforce a provision in its license with each of the distributor petitioners that permitted HBO to terminate the license and refuse to exhibit any of a particular distributor's films, should that distributor also license films to a pay television channel that accepted advertising. (Petition App. at 7a-8a.) The distributor petitioners "knuckled-under" to HBO and refused to permit Z Channel to advertise. (*Id.* at 13a, ¶ 39.)

Threatened with the prospect of losing the movies which, at that time, constituted a majority of its programming, Z Channel decided not to sell advertising time for its telecasts of sporting events, despite the fact that such advertising revenues were necessary "in order to make those telecasts financially viable." (*Id.* at 14a, ¶ 42.) From

April 1, 1988 until June 1, 1989, when Z Channel converted to an "all sports" programming format, the plaintiff suffered losses as a result of the defendants effectively prohibiting any advertising during Z Channel's sports broadcasts.[6] (Petition App. at 8a.)

C. First Amended Complaint

Petitioners create confusion about what is alleged in plaintiff's First Amended Complaint. Under Count I, which is captioned "Declaratory Relief Under Section 1 of the Sherman Act Against All Defendants," Z Channel sought "a declaration by the Court that defendants have violated Section 1 of the Sherman Act, 15 U.S.C. § 1, as hereinafter alleged, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, as amended, in a case of actual controversy within the jurisdiction of this Court." (App. at 15a, ¶ 45.)

As one of the stated bases for the court's jurisdiction, Z Channel relied upon 15 U.S.C. § 15, the Clayton Act provision granting a private cause of action for money damages under the Sherman Act. (*Id.* ¶ 46.) In its prayer for relief for Count One, Z Channel sought under 28 U.S.C. §§ 2201-2202, *inter alia*, a declaration that if defendants interpret and apply the applicable licensing agreements as precluding the telecasting of sports events containing advertising, they will violate Section 1 of the Sherman Act. (*Id.* at 23a.) In addition, for all counts, Z Channel prayed "[f]or such other relief that the Court

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[6] In addition, HBO cancelled its license agreement with Z Channel. (Petition App. at 8a.)

may deem just and proper" (*id.* at 24a), and in Counts Two and Three, based on the same facts using different legal theories, Z Channel specifically prayed for money damages (*id.* at 23a-24a).

It is quite important to note that the mootness of the injunctive relief arose after the district court granted summary judgment and while the appeal was pending. There was, therefore, no possibility of amending the Complaint below before petitioners' mootness argument was presented for the first time to the Court of Appeals. On April 25, 1989, a letter from plaintiff's counsel to the defense counsel stated that while conversion to an all sports format on June 1, 1989, would make injunctive relief unnecessary, Z Channel still sought declaratory relief and damages for lost advertising revenue for 1988 and part of 1989. (*See* HBO's Motion to Dismiss Appeal for Mootness, Exhibit D.)

REASONS FOR DENYING THE WRIT

Petitioners' request for a writ of certiorari should be denied because the Ninth Circuit's decision is faithful to the precedents established by this Court. The intercircuit conflict asserted in the petition is a fiction. The circuits have uniformly followed the mandate articulated in *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 459, 77 S. Ct. 912, 919 (1957), that an action for declaratory relief that alleges facts sufficient to support a remedy of money damages should not be dismissed as moot even if changed circumstances render the injunctive relief request moot. The petitioners' claim of conflict derives

from their misreading of cases in which there were no facts alleged sufficient to support a claim for money damages.

Nor does this case present a conflict between the application of Fed. R. Civ. P. 8(a)(3) and 54(c). Judge Kozinski's dissent, focusing on the lack of a specific prayer for money damages, fails to address the question presented to the Ninth Circuit. The issue was not whether the pleading complied with Rule 8(a)(3), but whether the prayer under the Declaratory Judgment statute implicitly embraced a viable claim for money damages so that such relief could be granted in a "final judgment" for Z Channel "even if the party [Z Channel] ha[d] not demanded such relief in the party's pleadings." Fed. R. Civ. P. 54(c). The Ninth Circuit, adhering to this Court's long-standing interpretations of Rule 54(c), concluded in the affirmative. In doing so, it created no conflict with Rule 8(a)(3).[7]

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[7] Z Channel concurs with HBO's admonition that statutes are to be interpreted so as not to render one part inoperative. *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 510 n.22, 106 S. Ct. 2039, 2046 n.22 (1986). It is HBO, however, that must be cited for making this error of basic statutory construction. (*See, e.g.*, Petition App. at 21a ("That issue [what a plaintiff must put in its complaint in order to get to judgment] is governed by Rule 8(a)(3), which has a lower number because it comes into play long before Rule 54(c).").) By viewing the Federal Rules of Civil Procedure simply as a number of hurdles to be overcome *in seriatim*, rather than as an integrated whole, with each rule supplementing and informing the others, HBO makes a fundamental error. *Nasser v. Isthmian Lines*, 331 F.2d 124, 127 (2d Cir. 1964) (Rules intended to embody a unitary concept of efficient and meaningful judicial procedure, and no single rule can consequently be construed in a vacuum.). *See*

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Accordingly, this Court should deny certiorari.

I.

RULE 8(a)(3) HAS BEEN SATISFIED

Petitioners and dissenting Judge Kozinski argue that Z Channel has failed to abide Rule 8(a)(3) because it does not expressly ask for money damages in Count One (though it does in the two subsequent counts of its First Amended Complaint).

Fed. R. Civ. P. 8(a)(3) provides that a complaint (or other pleading seeking relief) should contain "a demand for judgment for the relief the pleader seeks." Z Channel satisfies the requirements of this rule. Its amended complaint contains a prayer seeking, under the Declaratory Judgment Act, a declaration that defendants' proposed conduct in precluding Z Channel from accepting advertising during its sports programming violates Section 1 of the Sherman Act. It is hornbook law that the prayer in a contested case does not operate to limit either the nature or scope of the relief which may ultimately be granted. 6 J. Moore, W. Taggert & J. Wicker, *Moore's Federal Practice* ¶ 54.60 at 54-293 to -294 (2d ed. 1991). Rather, a plaintiff is entitled to whatever relief, under the facts alleged or proven, is appropriate even though the prayer does not specifically set out that relief. *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 65-66, 99 S. Ct. 383, 387 (1978). Indeed, the requirement that a plaintiff set out

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also 2A J. Moore, J. Lucas & G. Grotheer, *Moore's Federal Practice* ¶ 8.18 (2d ed. 1991).

the relief sought in a complaint does not even require that there be a formal "prayer." It is enough that the body of the complaint fairly states the nature of the relief to which plaintiff would be entitled if the allegations were proven at trial. *International Harvester Credit Corp. v. East Coast Truck*, 547 F.2d 888, 891 (5th Cir. 1977).

Here, Count One plainly sets out that defendants refusal to permit Z Channel to advertise during sporting events (at the risk of forfeiting its licenses for newly-released movies) violates Section 1 of the Sherman Act. The prayer also seeks relief relying on 15 U.S.C. § 15 (Section 4 of the Clayton Act). Plainly, the nature of Z Channel's entitlement and indeed the specific statute authorizing treble damages are cited in the "demand for judgment" section of the amended complaint. Accordingly, the reliance on Rule 8(a)(3) is plainly misplaced because Z Channel has satisfied the modest requirement of that provision.

Moreover, this Court's decision in *Conley v. Gibson*, interpreting Rule 8(f), repudiates the argument based on Rule 8(a)(3).

> Following the simple guide of Rule 8(f) that 'all pleadings shall be so construed as to do substantial justice,' we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.

355 U.S. 41, 48, 78 S. Ct. 99, 103 (1957).

II.

THE NINTH CIRCUIT, FAITHFUL TO THIS COURT'S DECISIONS OF LONG-STANDING, CORRECTLY CONCLUDED THAT THE CONTROVERSY WAS NOT MOOT

Rather than focus on the prayer for relief, the Ninth Circuit correctly discerned and applied the real test for determining mootness: if under the complaint, a party is entitled to relief in the form of money damages, the controversy does not become moot merely because the injunctive relief aspects are no longer applicable.[8] That

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[8] HBO characterizes Z Channel's Count One for declaratory judgment as a claim for "declaratory and injunctive relief." (*See* Petition at 7.) This is simply inaccurate. In its prayer, Z Channel did pray for declaratory relief and, as an ancillary remedy to that declaration, for an injunction. This is not a case, therefore, in which an injunction is the sole remedy sought and there is no other effective relief available. *Compare, e.g., Enrico's Inc. v. Rice*, 730 F.2d 1250, 1253-55 (9th Cir. 1984), and *Nevada ex rel. Nevada State Board of Agriculture v. United States*, 699 F.2d 486 (9th Cir. 1983) (plaintiff seeking to enjoin unenforced statute), *with Lincoln Mills*, 353 U.S. 448, 459, 77 S. Ct. 912, 914 (suit to compel arbitration of labor contract at closed mill not moot where arbitrator's determination of some grievances might entitle the plaintiffs to a monetary award), and *Powell v. McCormack*, 395 U.S. 486, 498-99, 89 S. Ct. 1944, 1952 (1969) (plaintiff's action for "declaratory and other relief" not moot where challenged exclusion resulted in financial loss). Linking declaratory and injunctive relief in a prayer does not make the remedies dependent upon one another. Thus, even though the case for an injunction dissolves, the parties to the principal controversy may still retain sufficient interests and injury as to justify the award of declaratory relief. *Powell*, 395 U.S. at 497, 89 S. Ct. at 1951 (where one of the several issues presented, including injunctive relief, becomes moot, the remaining live issues supply the requirement for an actual

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principle of law was plainly articulated in *Lincoln Mills*, 353 U.S. at 459, 77 S. Ct. at 919. Petitioners argue that the *Lincoln Mills* decision requires that the demand for money damages be expressly articulated. But that assertion is plainly wrong.

To start with, Count One was based on the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202. The latter section expressly authorizes the granting of any "necessary or proper relief" once the substantive rights of the parties have been determined. Accordingly, invocation of the Declaratory Judgment Act automatically puts a defendant on notice that a plaintiff which prevails on its substantive claim is entitled to any and all relief flowing from that determination. Section 2202 of the Declaratory Judgment Act is consistent with Rule 54(c) of the Federal Rules of Civil Procedure, which authorizes a final judgment to grant such relief to which a party is entitled, "even if the party has not demanded such relief in the party's pleadings."

Contrary to petitioners' argument, the other circuits have uniformly interpreted Fed. R. Civ. P. 54(c) in a way which is consistent with the application given to it by the Ninth Circuit in this case. In every circuit, the Federal Rules have been held to empower any court, as a matter of law, to award any relief to which a party is entitled, even though he has failed to specifically request the appropriate relief. *See, e.g., Hostrop v. Board of Junior*

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controversy). *See also Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 121-22, 94 S. Ct. 1694, 1698 (1974); *Zwickler v. Koota*, 389 U.S. 241, 244-45, 88 S. Ct. 391, 393 (1967).

College District No. 515, 523 F.2d 569, 581 (7th Cir. 1975), *cert. denied*, 425 U.S. 963 (1976); *New Amsterdam Casualty Co. v. Waller*, 323 F.2d 20, 24-25 (4th Cir. 1963), *cert. denied*, 376 U.S. 963 (1964); *Rental Development Corp v. Lavery*, 304 F.2d 839, 842 (9th Cir. 1962); *Schoonover v. Schoonover*, 172 F.2d 526, 530 (10th Cir. 1949); *Hawkins v. Frick-Reid Supply Corp.*, 154 F.2d 88, 89 (5th Cir. 1946); *Truth Seeker Co. v. Durning*, 147 F.2d 54, 56 (2d Cir. 1945); *Keiser v. Walsh*, 118 F.2d 13, 14 (D.C. Cir. 1941); *Dann v. Studebaker-Packard Corp.*, 288 F.2d 201, 215-17 (6th Cir. 1961); *Fast v. School District*, 728 F.2d 1030, 1033 (8th Cir. 1984); *Evans Products Co. v. West American Insurance Co.*, 736 F.2d 920, 923-24 (3d Cir. 1984). *Cf. Hamlin v. Warren*, 664 F.2d 29 (4th Cir. 1981) (A federal court has the inherent power to fashion appropriate relief; it is not constrained by the pleader's request for relief.), *cert. denied* 455 U.S. 911 (1982).

Mootness does not depend on whether the plaintiff has expressly alleged a claim for money damages. It depends, as *Powell v. McCormack* makes clear, on whether the pleadings are sufficient "to determine whether the plaintiff is entitled to another remedy." 395 U.S. 486, 499, 89 S. Ct. 1944, 1952 (1969). Applying that standard, the proper question to ask is whether the pleadings sufficiently disclose the prospective *entitlement* to a remedy – regardless of whether it is expressly articulated. To the extent that Z Channel's pleadings alleged sufficient facts to state a cognizable claim for money damages if the underlying allegations were proven to be true, the Ninth Circuit was required to reject a claim of mootness.

The facts of this case are entirely distinguishable from those presented in *Alejandrino v. Quezon*, 271 U.S. 528, 46 S. Ct. 600 (1926), a pre-Declaratory Judgment Act

case relied upon by petitioners. In that case, the reason for dismissal was not that the lost salary claim was insufficient as a basis to keep the case from becoming moot. Rather, the case was dismissed because the pleadings were such that it could *not* be determined *whether* any such right existed. In short, the Supreme Court could not grant mandamus because it had no basis for knowing from the pleadings whether or not there was an entitlement to a money judgment.[9] *Id.* at 535, 46 S. Ct. at 602; *Powell*, 395 U.S. at 498 n.10, 89 S. Ct. at 1950-51 n.10

Z Channel's First Amended Complaint afforded the Ninth Circuit more than ample information sufficient to establish the existence of a claim for money damages in this case. As a preliminary matter, Count One's jurisdictional predicate is 15 U.S.C. § 15, the private treble damages provision of the Sherman Act. Further, Z Channel expressly sought further relief under 28 U.S.C. § 2202 and, as part of its prayer, plaintiff requested "such other relief that the Court may deem just and proper." (App. at 24a.) *See Illinois Physicians Union v. Miller*, 675 F.2d 151, 158 (7th Cir. 1982).

In addition, the conduct complained of in Count One, the enforcement of illegal restrictions during the pendency of the case after denial of a preliminary injunction, had the effect of prohibiting Z Channel from selling

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[9] Of course, had the mootness of the injunctive relief occurred while the case was in the district court, Z Channel could either have amended its complaint or filed a new one. The entire fuss about mootness arises only because the mootness occurred too late to clarify the pleadings in the district court.

advertising during its sports programming. Clearly, defendants were on notice of potential liability for Z Channel's consequential loss of revenues. (App. at 14a, ¶ 42 ("Z Channel must be able to sell advertising time in its telecasts of sporting events in order to make those telecasts financially viable").) Finally, during the briefing and oral argument on summary judgment, it was plainly evident that Z Channel sought money damages.[10]

This is not a case, therefore, in which there is no mention of a remedy other than one which has become moot. More importantly, this is not a case in which the predicate facts reflecting a cognizable claim for damages were not fully disclosed and readily apparent to both the district and appellate court, as well as the defendants.

A federal court should not dismiss a meritorious claim because the complaint seeks one remedy rather than another plainly appropriate one. *Holt Civic Club*, 439 U.S. at 65-66, 99 S. Ct. at 387. Given that Z Channel is clearly entitled to (treble) money damages if the defendants' unlawful licensing provisions violate Section 1 of the Sherman Act, the omission of such a request from its

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[10] Petitioner cannot and does not claim that it is in any way surprised by Z Channel's claim for money damages under Count One. That claim for relief was expressly and unequivocally stated to the district court and the defendants in Z Channel's Opposition to HBO's Motion for Summary Judgment. (Opposition Brief at 36 n.19.) Although Z Channel abandoned its allegation of a *per se* boycott under Count 2 of the Complaint, it did not similarly abandon any claim for damages other than the one that accompanied that particular claim. (*See* App. at 23a.)

prayer for relief under Count One should not, as petitioners contend, constitute a barrier to redress. *Id.*

III.

THE CASES RELIED ON TO CREATE A CONFLICT ARE DISTINGUISHABLE AND NO INTERCIRCUIT CONFLICT EXISTS

The facts presented in this case are clearly distinguishable from those presented in many of the cases relied upon by petitioners, both in this petition and in its motion to the Court of Appeal. Petitioners rely, for example, on *James Luterbach Construction Co. v. Adamkus*, 781 F.2d 599, 602 (7th Cir. 1986), to create an intercircuit conflict. In that case, the plaintiff expressly stated that there existed no adequate remedy at law. In short, there was no remedy for damages available. No amount of amending its prayer under Fed. R. Civ. P. 15 before or during trial, would assist that plaintiff. Nor could Rule 54(c) be invoked because even after judgment the plaintiff would not be entitled to money damages.

Similarly, in *H. K. Porter Co. v. Metropolitan Dade County*, 650 F.2d 778, 782-83 (5th Cir. 1981), another case relied upon petitioners to demonstrate intercircuit conflict, the plaintiff refused to amend its complaint to seek money damages after having been instructed to do so by the district court. Because of the plaintiff's waiver of money damages, the court of appeals concluded, therefore, that a revision of the prayer to include such a remedy would be unavailing.

Finally, as explained by Judge Canby in the opinion below, *Dan Caputo Co. v. Russian River County Sanitation*

District, 749 F.2d 571, 574 (9th Cir. 1984), is also distinguishable. In that case, the court found that money damages arising from the failure of a sanitation district to award a contract to the plaintiff were unavailable because plaintiff did not submit a bid on the project. Nor did that plaintiff even assert a right to such damages.

In short, in the cases cited by petitioners, the plaintiff was either a disappointed bidder, a graduated student, or a released prisoner who could no longer show an entitlement to *any* form of relief that could have been appropriately granted upon remand. *See, e.g., Luterbach*, 781 F.2d at 602-03; *Altec Industries, Inc. v. Weinberger*, 791 F.2d 931 (6th Cir. 1986); *H. K. Porter*, 650 F.2d at 782; *North Carolina v. Rice*, 404 U.S. 244, 248, 92 S. Ct. 402, 405 (1971) (petition to have second conviction invalidated mooted by having discharged sentence); *DeFunis v. Odegaard*, 416 U.S. 312, 317, 94 S. Ct. 1704, 1706 (1974).[11]

Where, as in this case, there exist effective judicial remedies that the district court could grant, the plaintiff's claim is not moot and should not be dismissed.

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[11] *See also Hall v. Beals*, 396 U.S. 45, 48, 90 S. Ct. 200, 201 (1969); *Fair v. United States Environmental Protection Agency*, 795 F.2d 851, 854-55 (9th Cir. 1986); *Nevada*, 699 F.2d at 487.

IV.

CONCLUSION

The Ninth Circuit's refusal to declare moot a concrete, controverted and actual dispute between parties which is fully susceptible to judicial resolution is entirely proper and consistent with the law of this Court and that of other circuits. That the Ninth Circuit has remanded a case for resolution on the merits, rather than standing on the omission of a prayer for damages as a reason for mooting the entire suit, was entirely correct and appropriate. The Ninth Circuit's routine application of well settled law fails to present an appropriate question for review by this Court. For this and all the foregoing reasons, respondent Z Channel submits that this Court should deny HBO's petition for a writ of certiorari.

Dated: December 2, 1991

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AMERICAN SPECTACOR TELEVISION PROGRAMMING COMPANY, dba Z CHANNEL, and Z CHANNEL LIMITED PARTNERSHIP, Plaintiffs, vs. HOME BOX OFFICE, INC., MGM/UA TELECOMMUNICATIONS, INC., PARAMOUNT PICTURES CORP., TWENTIETH CENTURY FOX FILM CORP., AND WARNER BROS., INC., Defendants.	CIV. NO. 88 01633 FIRST AMENDED COMPLAINT FOR: 1. DECLARATORY RELIEF UNDER SECTION 1, SHERMAN ACT (15 U.S.C. §1) 2. DAMAGES AND INJUNCTIVE RELIEF FOR VIOLATION OF SECTION 1, SHERMAN ACT (15 U.S.C. §1) 3. DAMAGES AND INJUNCTIVE RELIEF FOR INTENTIONAL INTERFERENCE WITH PROSPECIVE [sic] ECONOMIC ADVANTAGE JURY TRIAL DEMANDED

Plaintiffs American Spectacor Television Programming Company, doing business as Z Channel ("Z Channel"), and its predecessor, Z Channel Limited Partnership, file this Complaint against defendants Home Box Office, Inc., MGM/UA Telecommunications, Inc., Paramount Pictures Corporation, Twentieth Century Fox Film Corporation, and Warner Bros., Inc. and, demanding trial by jury, claim and allege as follows:

I.

THE PARTIES

1. Plaintiff American Spectacor Television Programming Company is a partnership and the anticipated successor in interest to Z Channel Limited Partnership, the owner and operator of Z Channel. The film licensing agreements relevant to this lawsuit have been made in the name of Z Channel Limited Partnership. Therefore, the complaint has been amended to include Z Channel Limited Partnership as a plaintiff until such time that American Spectacor finalizes its formal partnership agreements, including the anticipated assignment of Z Channel Limited Partnership's licensing agreements. Both plaintiffs are hereinafter referred to as "Z Channel."

2. Z Channel is a pay television service and is engaged in the business of providing television programming to pay television subscribers in the greater Los Angeles area ("Los Angeles").

3. Plaintiffs are informed and believe, and on that basis allege, that defendant Home Box Office, Inc. ("HBO") is a corporation organized and existing under

the laws of the State of Delaware, with its principal place of business in New York City, New York. HBO conducts business and maintains a place of business in this judicial district.

4. HBO is engaged in, among other things, the business of providing television programming to pay television subscribers throughout the United States, and it is the largest pay television service in the United States and in Los Angeles.

5. Plaintiffs are informed and believe, and on that basis allege, that defendant MGM/UA Telecommunications, Inc. ("MGM/UA"), also known as Metro-Goldwyn-Mayer Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Los Angeles, California. MGM/UA conducts business and maintains a place of business in this judicial district. Plaintiffs are informed and believe, and on that basis allege, that MGM/UA is a distributor of motion pictures and is engaged among other things, in the licensing of motion pictures produced by affiliated MGM/UA entities to pay television services such as HBO and Z Channel for telecast to subscribers.

6. Plaintiffs are informed and believe, and on that basis allege, that defendant Paramount Pictures, Corp. ("Paramount") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York City, New York. Paramount conducts business and maintains a place of business in this judicial district. Paramount is a producer and distributor of motion pictures and is engaged in, among

other things, the licensing of motion pictures to pay television services such as HBO and Z Channel for telecast to subscribers.

7. Plaintiffs are informed and believe, and on that basis allege, that defendant Twentieth Century Fox Film Corporation ("Twentieth Century Fox") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Los Angeles, California. Twentieth Century Fox conducts business in this judicial district. Twentieth Century Fox is a producer and distributor of motion pictures and is engaged in, among other things, the licensing of motion pictures to pay television services such as HBO and Z Channel for telecast to subscribers.

8. Plaintiffs are informed and believe, and on that basis allege, that defendant Warner Bros., Inc. ("Warner") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Burbank, California. Warner conducts business in this judicial district. Warner is a producer and distributor of motion pictures and is engaged in, among other things, the licensing of motion pictures to pay television services such as HBO and Z Channel for telecast to subscribers.

II.

NATURE OF TRADE AND COMMERCE

A. PAY TELEVISION

9. Pay television services provide their viewer-subscribers with television programming delivered to the

subscribers primarily over wire by franchise cable television systems affiliated with the services. Subscribers pay special monthly fees for those services over and above the fees paid for the basic cable programming usually provided by the cable television systems.

10. Pay television services provide their subscribers with television programming that is not available on basic cable television or on broadcast television, *i.e.*, "off-air" or free commercial television. The programming provided by pay television services overall consists primarily of theatrical motion pictures and, to a lesser degree, sports events and "specials". New theatrical motion pictures are, after their theatrical exhibition, normally released to pay television before appearing on network or syndicated broadcast television or basic cable television. Accordingly, one of the attractions of pay television for subscribers is the relatively short "lag time" between theatrical exhibition and pay television exhibition.

B. Z CHANNEL AND HBO

11. Plaintiffs and HBO own and operate pay television services and are direct competitors in providing and marketing those services to subscribers and potential subscribers within the greater Los Angeles area. HBO, because it is vertically integrated, is also a producer of its own motion pictures and supplies them to Z Channel and other of its competitors.

12. Z Channel is a regional pay television service that is marketed only in Los Angeles. It accounts for

approximately 5.9% of the pay television subscriber market in Los Angeles and .3% of the market in the United States.

13. HBO is a national pay television service that is marketed nationwide, including in Los Angeles. HBO also owns and operates two all-movie pay television services known as Cinemax and Festival, which are marketed as separate and distinct services from HBO. Festival and Cinemax are marketed nationwide, including in Los Angeles. HBO, Cinemax and Festival services command approximately 62.5% of the nationwide subscriber market for pay television and approximately 59.1% of the subscriber market in Los Angeles. Accordingly, defendant HBO, through its HBO, Cinemax, and Festival services, possesses a dominant share of the pay television service market both nationwide and in Los Angeles.

14. The pay television business involves the continual shipment and delivery of films for pay television exhibition across state lines in interstate commerce. All of the parties herein are engaged in interstate commerce. Any restraint on the operation of a pay television company, including Z Channel, directly and adversely affects and interferes with the flow of motion pictures in interstate commerce.

C. LICENSING AGREEMENTS

15. The most important and distinctive product offered by pay television services such as Z Channel and HBO consists of new theatrical motion pictures available for showing on televison for the first time. These never-

before-shown-on-television motion pictures are critical to a service's ability to acquire and retain subscribers.

16. After a motion picture's run has ended in theaters, it is made available to pay television services by means of licensing agreements entered into between the pay television services and the motion picture's distributor.

17. Defendants MGM/UA, Paramount, Twentieth Century Fox, and Warner are major producers and distributors of theatrical motion pictures accounting for about 50% of all gross box office receipts of motion pictures distributed for theatrical exhibition. Plaintiffs are informed and believe, and on that basis allege, that these defendants supply the majority of the most popular motion pictures for telecast on pay television.

18. Since at least September 8, 1982, plaintiff Z Channel Limited Partnership, or its predecessors has been party to a master licensing agreement with MGM/UA that permits it to exhibit motion pictures distributed by MGM/UA ("MGM/UA Agreement").

19. Since at least July 23, 1982, plaintiff Z Channel Limited Partnership or its predecessors has been party to a master licensing agreement with Paramount that permits it to exhibit motion pictures distributed by Paramount ("Paramount Agreement").

20. Since at least January 23, 1982, plaintiff Z Channel Limited Partnership or its predecessors has been party to a master licensing agreement with Twentieth Century Fox that permits it to exhibit motion pictures

distributed by Twentieth Century Fox ("Twentieth Century Fox Agreement").

21. Since at least July 10, 1984, plaintiff Z Channel Limited Partnership or its predecessors has been party to a licensing agreement with Warner that permits Z Channel to exhibit motion pictures distributed by Warner ("Warner Agreement").

22. Unlike other pay television services, defendant HBO also produces and distributes its own motion pictures and distributes motion pictures produced by others. Since at least February 21, 1984, plaintiff Z Channel Limited Partnership or its predecessors has been a party to a licensing agreement with HBO that permits Z Channel to exhibit motion pictures distributed by HBO ("HBO Agreement").

23. Plaintiffs are informed and believe, and on that basis allege, that at all times herein relevant, HBO, in its capacity as a pay television service, has been a party to master licensing agreements with MGM/UA, Paramount, Twentieth Century Fox, and Warner. By reason of those master license agreements, HBO exhibits a very large percentage of the motion pictures distributed by these distributor defendants. Plaintiffs are informed and believe, and on that basis allege, that HBO has been and is the largest licensee of theatrical motion pictures in the pay television industry.

24. HBO is owned in whole or material part, by Time, Inc., which also owns in whole or in material part, American Television & Communications ("ATC"), which is the second largest system of cable television companies in the United States.

25. Because of HBO's substantial and dominant positions in the pay television service, because of its vertical integration and because of its relationship to Time, Inc., HBO commands substantial economic leverage and bargaining power with distributors of theatrical motion pictures, including defendants MGM/UA, Paramount, Twentieth Century Fox, and Warner.

D. Z CHANNEL'S ADDITION OF ADVERTISING SUPPORTED SPORTS EVENTS

26. Z Channel's present programming format consists entirely of motion pictures. As of April 1, 1988, Z Channel will expand its programming format by adding sports events. Z Channel has negotiated for and obtained the exclusive right to telecast in Los Angeles certain games played at "home" by the California Angels baseball team, the Los Angeles Dodgers baseball team and the Los Angeles Clippers basketball team.

27. Telecasts of home games for the above sports teams are not normally available to consumers and viewers in Los Angeles on either broadcast television or basic cable services.

28. To make its telecasting of these games financially viable, Z Channel has sold and intends to sell time for advertising during the telecasts. The advertising time sold is and will be strictly limited and will take place only during the telecasts of the games themselves. No advertising time during or adjacent to the exhibition of motion pictures on Z Channel will be sold.

29. Telecasts of team sports events such as baseball and basketball games on pay television has traditionally been accompanied by commercial advertising during the events. This is true for pay television services that exhibit sports events exclusively.

30. Defendants HBO, MGM/UA, Paramount, Twentieth Century Fox and Warner, and each of them, permit exhibition of their theatrical motion pictures by a pay television service located in Philadelphia, Pennsylvania, known as PRISM, which has sports events programming and which sells advertising within that sports programming.

E. Z CHANNEL'S CHANGE TO SATELLITE DISTRIBUTION

31. Pay television services are primarily distributed through cable systems. A pay television service's signal is transmitted to and received by cable systems affiliated with the service and then distributed by the cable systems by wire to the service's subscribers.

32. One way in which a pay television signal can be transmitted to cable systems is by means of "point-to-point" terrestrial microwave. Microwave signals are often received poorly or not at all because of interference from weather and obstruction caused by natural terrain and man-made structures. Microwave signals are also fairly limited in range, with a maximum range of 25 to 30 miles. For these reasons, a pay television service delivering its signal to affiliated cable systems by terrestrial microwave must establish an interconnecting system of receiver/

transmitters ("hubs") to relay the signal to the cable systems.

33. Another way in which a pay television signal can be transmitted to cable systems is by means of satellite. Satellite transmission involves the sending of a signal by the service from a transmitter located on the earth to a synchronously orbiting communication satellite. The orbiting satellite receives, amplifies and retransmits the signal back to earth where it is received by the cable systems. Satellite delivery avoids the problems of obstruction and interference, and it can reach cable systems throughout a large region without the need to create and maintain an expensive system of relay stations on the ground.

34. Satellite transmission is the more desirable method of distributing a pay television service to its cable affiliates, because it is more reliable, more economic and far more technically efficient. It also permits reaching a much greater geographic area (and, therefore, more potential subscribers) than terrestrial microwave transmission.

35. Z Channel has distributed its service to cable systems by means of terrestrial microwave transmission. As of April 1, 1988, Z Channel will convert to transmitting its signal to affiliate cable systems by satellite in order to enhance its delivery capability and reliability within Los Angeles. Its satellite transmission is not intended for direct reception by subscribers.

36. Z Channel's satellite transmission will be encrypted, *i.e.*, "scrambled", so as to prevent reception and use of that signal by anyone other than the affiliated

cable systems. The encryption device and technology Z Channel will use are the same as that used for satellite transmission by other pay television services throughout the industry, including HBO.

III.

OPERATIVE ILLEGAL CONDUCT

37. Z Channel's addition of sports events programming and its conversion to satellite transmission will make Z Channel a more effective and viable competitor in the pay television service market in Los Angeles.

38. Plaintiffs are informed and believe, and on that basis allege, that beginning at a date unknown to plaintiffs and continuing up to and including the date of this Amended Complaint, defendant HBO has secured or coerced from defendants MGM/UA, Paramount, Twentieth Century Fox, and Warner their cooperation in reasonably restraining and impairing Z Channel's ability to compete with HBO by interpreting and applying their respective licensing agreements with plaintiff Z Channel Limited Partnership in a manner as to preclude Z Channel from advertising during sports events and from converting to satellite transmission.

39. In fact, Z Channel has been informed by each defendant, acting at the instance or on the advice of defendant HBO that its respective licensing agreement with plaintiff Z Channel Limited Partnership prohibits and restricts Z Channel from (1) selling advertising time even if such advertising appears only during sports

events and (2) transmitting its signal to its cable system affiliates by satellite.

40. Each defendant, including HBO, has also expressly threatened, represented or implied that should Z Channel either permit advertising during its sports events and/or transmit its service to its cable system affiliates by means of satellite, Z Channel will be considered in breach of its license agreement and defendant will immediately stop the shipment of all motion picture product to Z Channel for pay television exhibition.

41. Plaintiffs are also informed and believe and, on that basis allege, that defendant HBO has discouraged affiliations between Z Channel and various cable television systems by telling such cable systems that Z Channel may no longer be getting motion picture product from HBO and other distributors because of Z Channel's satellite transmission and sports telecasting plans.

42. Plaintiffs are informed and believe and, on that basis allege, that defendants have acted in the aforesaid manner with the knowledge and expectation that: (a) Z Channel's continued use of terrestrial microwave distribution to cable system affiliates is a severe hinderance to Z Channel's viability as a competitive pay television service; (b) conversion to satellite distribution will greatly enhance the reach and reliability of Z Channel pay television service; (c) the addition of sporting events will greatly enhance the attractiveness of the programming on Z Channel's service and will generate new subscribers; (d) Z Channel must be able to sell advertising time in its telecasts of sporting events in order to make those telecasts financially viable; and, (e) sports telecasting and

satellite transmission are interrelated and together will make Z Channel a much more effective competitor in the pay television service market and will thereby add significantly to competition within that market in Los Angeles.

43. Plaintiffs are informed and believe, and on that basis allege, that defendants have acted in the aforesaid manner with the knowledge and expectation that, absent the addition of sports events programming containing advertising and a conversion to satellite transmission, Z Channel, in the short run, will be a less effective and viable competitor to HBO and barred from entering the market for pay television offering both movie and sports programming, and, in the long run, would likely be eliminated as a competitor altogether because of the known past losses it has sustained.

44. Plaintiffs are informed and believe, and on that basis allege, that defendants have acted in the aforesaid manner with the knowledge and expectation that absent a continued supply of motion picture product from defendants and affiliation with cable television systems, Z Channel will likely cease to exist.

IV.

COUNT ONE

(Declaratory Relief Under
Section 1 of the Sherman Act
Against All Defendants)

A. JURISDICTION AND VENUE

45. Count One seeks a declaration by the Court that defendants have violated Section 1 of the Sherman Act, 15

U.S.C. § 1, as hereinafter alleged, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, as amended, in a case of actual controversy within the jurisdiction of this Court.

46. This Court has jurisdiction over the subject matter of this action under 15 U.S.C. § 15 and 28 U.S.C. §§ 1331 and 1337. Venue is proper under 15 U.S.C. § 22 and 28 U.S.C. §§ 1391(b) and (c).

B. THE PARTIES

47. Plaintiffs incorporate by reference as if fully set forth herein Paragraphs 1 through 8, *supra*.

C. VIOLATIONS ALLEGED

48. Plaintiffs hereby incorporate by reference as if fully set forth herein Paragraphs 9 through 44, *supra*.

49. To the extent that defendants, and each of them, interpret the licensing agreements between each of them and Z Channel Limited Partnership as precluding Z Channel's addition of advertising in its sports telecasts and/or its conversion to satellite transmission to cable affiliates, said licensing agreements constitute unreasonable restraints of trade in the pay television market in Los Angeles in violation of Section 1 of the Sherman Act (15 U.S.C. § 1) and, as such are, unenforceable as a matter of law.

50. Defendants' interpretations and applications of their licensing agreements with plaintiff Z Channel Limited Partnership would have injurious effects on competition, including the diminishment of competition among

and between pay television services and a restriction on consumer choice among pay television services and different pay television programming.

D. DECLARATORY RELIEF

51. Defendants' interpretations and applications of the licensing agreements constitute unreasonable restraints of trade in violation of Section 1 of the Sherman Act. Plaintiffs contend that defendants' interpretations and applications of the agreements effectuate an anticompetitive purpose and would have an anticompetitive effect on the marketing of pay television services in the Los Angeles area. Plaintiffs further content [sic] that, as such, these licensing agreements are unenforceable as a matter of law. Plaintiffs are informed and believe, and on that basis allege, that defendants contend to the contrary.

52. Plaintiffs contend that it would be a violation of Section 1 of the Sherman Act for defendants to withhold product from Z Channel on the basis that it is converting to satellite transmission and will have advertising in its sports telecasts. Plaintiffs are informed and believe, and on that basis allege, that defendants contend to the contrary.

53. There exists, therefore, a substantial, present and justiciable controversy between plaintiffs and defendants with respect to the legality under the Sherman Act of the defendants' licensing agreements as interpreted and applied by defendants to preclude Z Channel's addition of advertising in sports telecasts and conversion to satellite transmission.

V.

COUNT TWO

(Group Boycott In Restraint of Trade
Under Section 1 Of The Sherman Act
Against All Defendants)

A. JURISDICTION AND VENUE

54. Count Two seeks money damages and injunctive relief for defendants' group boycott in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

55. The Court possesses jurisdiction over the subject matter of this action under 15 U.S.C. § 15 and 28 U.S.C. §§ 1331 and 1337. Venue is proper under 15 U.S.C. § 22 and 28 U.S.C. §§ 1391(b) and (c).

B. THE PARTIES

56. Plaintiffs incorporate by reference as if fully set forth herein Paragraphs 1 through 8, *infra*.

C. CO-CONSPIRATORS

57. Plaintiffs are informed and believe, and on that basis allege, that various other persons and/or entities not made defendants herein and whose identities are not now known to plaintiffs have participated as co-conspirators with the defendants in the violation hereinafter alleged and have performed acts and have made statements in furtherance thereof.

D. VIOLATIONS ALLEGED

58. Plaintiffs hereby incorporate by reference as if fully set forth herein Paragraphs 9 through 44, *supra*.

59. Beginning at a time presently unknown to the plaintiffs and continuing through the present, defendants have combined, conspired and agreed to unreasonably restrain trade in the pay television market in Los Angeles in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. These violations are continuing and will continue until they are enjoined.

60. For the purpose of forming and effectuating the foregoing conspiracy, and for the purpose and having the actual effect of curtailing the increase in competition among pay television services that would result from Z Channel's addition of sports events programming and its change to satellite transmission, defendants have agreed, among other things, that:

> (a) their respective licensing agreement shall be interpreted and enforced as prohibiting Z Channel's distribution of pay television service by satellite and its telecasting of sports events with advertising; and, (b) if Z Channel engages in either practice, defendants shall discontinue supplying motion picture product to Z Channel.

E. EFFECTS OF THE VIOLATIONS

61. The defendants' acts and practices have had, and will continue to have, unless enjoined, the following injurious effects, among others:

> (a) Competition among and between pay television services will be diminished;

(b) Consumer choice among pay television services and different television pay programming will be suppressed; and,

(c) The beneficial and lawful effects of increased competition among and between pay television services will be curtailed.

F. INJURY TO PLAINTIFF'S BUSINESS AND PROPERTY

62. Plaintiffs were and continue to be a principal target and victim of the above combination and conspiracy and, as a direct and proximate result of the violations set forth above, have been restricted in their ability to compete and have been pecuniarily injured in their business and property in an amount not yet ascertained. Plaintiffs will respectfully request leave of the Court to amend the Complaint when said amount has been determined or to amend the Complaint to conform to proof at trial.

63. By reason of and as a direct and proximate result of the unlawful acts hereinabove alleged, plaintiffs have suffered and will suffer substantial injury and damage to their business and property unless said conduct is enjoined.

VI.

COUNT THREE

(Intentional Interference with Prospective Economic Advantage and Conspiracy to Intentionally Interfere With Prospective Economic Advantage Against All Defendants)

A. JURISDICTION AND VENUE

64. Count Three seeks money damages and injunctive relief for defendants' intentional interference and conspiracy to interfere intentionally with plaintiffs' prospective economic advantages.

65. The Court has jurisdiction over the subject matter of this claim by virtue of the doctrine of pendent jurisdiction because the claim asserted in this Court arises from the same transactions, circumstances and nucleus of operative fact as Counts One and Two, *supra*.

66. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) in that the instant claims arose and all defendants do business within the Central District of California.

B. PARTIES

Plaintiffs incorporate by reference as if fully set forth herein Paragraphs 1 through 8, *supra*.

C. VIOLATIONS ALLEGED

67. Plaintiffs incorporate by reference as if fully set forth herein Paragraphs 9 through 44, *supra*.

68. Beginning at a time unknown to plaintiffs and continuing up to the time of this Complaint, defendants

have each individually engaged in intentional, willful and malicious conduct which has interfered with prospective business and contractual relationships which plaintiffs possessed and which defendants were aware of. In addition, defendants have, by combination conspiracy and agreement, acted together to engage in intentional, willful and malicious conduct which has interfered with prospective business and contractual relations which plaintiffs possessed and which defendants were aware of.

69. Said prospective business and contractual relationships would have been performed and would have yielded profits and benefits to plaintiffs in the absence of said conduct by defendants.

70. The relations and prospective advantages which defendants have knowingly attempted to interfere with are those plaintiffs enjoy with defendants, those which plaintiffs enjoy with both existing and potential subscribers and cable system affiliates, those which exist between plaintiffs and various advertising sponsors, and those between plaintiffs and various sports organizations.

71. Defendants have attempted to disrupt, disrupted and continue to disrupt and interfere with plaintiffs' prospective business and contractual relationships with movie distributors, cable affiliates, subscribers, advertising sponsors and sports organizations.

D. INJURY TO PLAINTIFF

72. As a direct and proximate result of defendants' intentional disruption and interference with plaintiffs' contractual relationships and prospective business

advantages, plaintiffs have been damaged pecuniarily in its business and property in an amount not yet ascertained. Plaintiffs will respectfully request leave of the Court to amend the Complaint when said amount has been determined or to amend the Complaint to conform to proof at trial.

73. By reason of and as a direct and proximate result of the unlawful acts hereinabove alleged, plaintiffs have suffered and will suffer substantial injury and damage to their business and property unless said conduct is enjoined.

E. PUNITIVE DAMAGES

74. In engaging in the acts herein alleged, defendants acted with malice, with disregard for the lawful rights of plaintiffs and with the intent or purpose of causing injury and harm to plaintiffs. Accordingly, punitive damages should be awarded against all defendants and each of them.

VII.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment as follows:

1. On Count One:

(a) For declaration that defendants will violate Section 1 of the Sherman Act if they interpret and apply the applicable licensing agreements between defendants

and plaintiff Z Channel Limited Partnership as precluding the transmission of Z Channel's service by satellite or the telecasting of sports events containing advertising, and an injunction prohibiting enforcement of the agreements in the illegal manner described;

(b) For their reasonable attorneys' fees and costs incurred herein pursuant to 15 U.S.C. § 15(a).

2. On Count Two:

(a) For judgment against each defendant for treble the amount of plaintiffs' damages, when ascertained, pursuant to 15 U.S.C. § 15(a);

(b) For injunctive relief enjoining each defendant from further violations as alleged herein;

(c) For their reasonable attorneys' fees and costs incurred herein pursuant to 15 U.S.C. § 15(a).

3. On Count Three:

(a) For judgment against each defendant for plaintiffs' damages, when ascertained;

(b) For injunctive relief, enjoining each defendant from further violations as alleged herein;

(c) For punitive damages against each defendant.

4. Other Relief:

For such other relief that the Court may deem just and proper.

Dated: April 6, 1988

BLECHER & COLLINS, P.C.

By _____
MAXWELL M. BLECHER
Attorneys for Plaintiffs
AMERICAN SPECTACOR TELEVISION PROGRAMMING COMPANY, dba Z CHANNEL; Z CHANNEL LIMITED PARTNERSHIP

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and pursuant to the local rules of this Court, plaintiff hereby demands a jury trial as to all issues in the instant matter so triable.

Dated: April 6, 1988

BLECHER & COLLINS, P.C.

By _____
MAXWELL M. BLECHER
Attorneys for Plaintiffs
AMERICAN SPECTACOR TELEVISION PROGRAMMING COMPANY, dba Z CHANNEL; Z CHANNEL LIMITED PARTNERSHIP

PROOF OF SERVICE

The undersigned certifies that:

I am and was, at all times herein mentioned, a citizen of the United States and a resident of the County of Los

Angeles, State of California, over the age of 18 years and not a party to or interested in the within action, and that my business address is 611 West 6th Street, Suite 2800, Los Angeles, California. I further certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I had the foregoing document served on the below-listed parties to this action by causing copies of same, enclosed in sealed envelopes, addressed as follows: to be hand delivered by messenger on April 6, 1988:

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